Supreme Court, U.S.
FILED
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No. _____

In the
Supreme Court of the United States

James Clifford Akins,

Petitioner,

vs.

State of Minnesota,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE MINNESOTA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Whether a police officer may make a warrantless, non-consensual nighttime entry into a person's home to investigate a private citizen's report of bad driving behavior where the police officer neither has, nor believes he has, probable cause to believe the person has committed any crime.

II. Whether a police officer has a lawful basis to stop a car where, upon receiving a private citizen's report of bad driving conduct, the officer follows the car and sees no unlawful driving conduct nor observed anything else justifying a stop.

III. Whether forcing a person to relitigate an issue that has already been conceded by the state on appeal in an implied consent proceeding violates a person's federal right to due process.

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State of Minnesota

James Clifford Akins

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OPINIONS BELOW

The Minnesota Supreme Court denied Petitioner's Petition for further review in an Order opinion dated and filed April 25, 2000. The Minnesota Court of Appeals filed an unpublished decision on March 14, 2000, affirming the trial court's decision. The appeal to the Minnesota Court of Appeals followed the trial court's denial of petitioner's motions to suppress evidence and dismiss the charges, and the trial court's finding petitioner guilty of gross misdemeanor driving under the influence, careless driving, and obstructing legal process.

JURISDICTION

The order sought to be reviewed was entered in the Minnesota Supreme Court on April 25, 2000. Jurisdiction to review on a writ of certiorari the order in question is conferred by 28 U.S.C. §1257.

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment IV, United States Constitution

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . .

Amendment XIV, United States Constitution

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law. . .

STATEMENT OF THE CASE

In a criminal complaint dated June 9, 1998, petitioner James Clifford Akins was charged in Hennepin County District Court, State of Minnesota with one count of enhanced gross misdemeanor driving under the influence of alcohol, one gross misdemeanor count of driving under the influence of alcohol, one gross misdemeanor count of obstructing legal process, and one misdemeanor count of careless driving. Defendant filed a motion to suppress the state's evidence. A hearing was held and, on June 22, 1999, the Trial Court denied petitioner's motion. Defendant waived trial by jury and, also on June 22, 1999, the Court, on stipulated facts, found petitioner guilty on counts II, III, and IV (the trial court dismissed the enhanced gross misdemeanor charge.) On June 23, 1999, petitioner filed a notice of appeal to the Minnesota Court of Appeals.

In an Unpublished Opinion filed March 14, 2000, the Minnesota Court of Appeals affirmed petitioner's conviction. The Minnesota Supreme Court denied petitioner's Petition for Review on April 25, 2000.

On April 21, 1998, at about 8:25 p.m., Kristin Johnson was driving east on Highway 394 and was entering southbound Highway 169. A black BMW drove in front of her - cutting her off. The car drove on the curb.

In response, Ms. Johnson slowed her car. As the cars entered the 169 southbound ramp, she thought the black car "almost hit the cement barrier on the left hand side of the median." She saw the car speed up, slow down and drive "back and forth between lanes." Ms. Johnson called 911 because the black car had its flashers on. Ms. Johnson thought something was wrong with the person.

The 911 dispatcher asked Ms. Johnson to continue to follow the car. Ms. Johnson told the dispatcher the license number of the car. They turned west on Highway 62. At an intersection, they turned left and Ms. Johnson saw a police

squad car. She told the dispatcher about the police car, the dispatcher told her she could go ahead. She went straight and saw the car turn off to the left as she drove away.

The police car which followed the black car was driven by Trooper David Sutherland.

Sutherland had been driving south on Highway 169 when he heard an alert on his police radio about a "possibly impaired driver." He was later told the car was a black BMW with Minnesota license 335 FYL. Entering that information into the computer terminal in his car, Sutherland learned the description and address of the car's registered owner. As he sat stopped on the roadway shoulder, he saw the black car drive past him.

To investigate why the driver had been driving in the manner that had been reported, Sutherland followed the black car and turned on his red emergency lights but not his siren. He followed the black car for approximately two blocks. Sutherland said it "is neither usual or unusual" for a car to travel a couple of blocks before stopping for red lights. Sutherland testified he did not know whether the driver of the black car, petitioner, ever saw his red lights.

The black car turned right into the address of the home of the registered owner, petitioner. The garage door of the home was going up and the black car pulled into the garage. Sutherland testified he never personally observed "any inappropriate driving conduct." Sutherland parked his squad car in the driveway of petitioner's home.

Sutherland then got out of his car and walked into the garage. He testified that he got out of his car and went into the attached garage quickly in case the garage door was closing. The garage of petitioner's home is attached and part of the house. A diagram of the home and surrounding area was created at the Implied Consent hearing and was submitted to the trial court as part of the record.

Sutherland's stated purpose in going into the home was to investigate what he had been told concerning petitioner's

driving conduct. At the time he first entered the petitioner's house Sutherland testified he did not believe he had probable cause to arrest petitioner for DUI. He had not spoken with petitioner, and he had not observed the petitioner at all. Believing he lacked probable cause to arrest petitioner, Sutherland testified he wanted to talk to petitioner.

After entering his home, Sutherland spoke with petitioner, observed the odor of alcohol and asked Appellant to come out of his home and into the driveway. Petitioner complied. Shortly thereafter petitioner ran back into his house, through the garage area and into his living quarters. As petitioner ran back into his home, Sutherland first told him he was under arrest. There was a struggle and petitioner was handcuffed.

REASONS FOR GRANTING THE WRIT

This Court should grant the writ sought by Petitioner Akins because the Minnesota Supreme Court, by adopting the reasoning of the Minnesota Court of Appeals misapplied the Fourth Amendment's protection against unreasonable search or seizures in the curtilage of a person's home. This decision of the Minnesota Supreme Court is at odds with the applicable decisions of this Court.

The Minnesota Court of Appeals' decision is premised on the incorrect conclusion that Petitioner Akins did not have a reasonable expectation of privacy in a garage attached to his home. In its decision, the Minnesota Court of Appeals determined that state court decisions provide there is no expectation of privacy, and consequently police do not violate the Fourth Amendment by "going on to private property to investigate if they restrict their movements to places visitors would be expected to go, such as walkways, driveways or porches." According to the Minnesota Court of Appeals, these cases stand for the proposition that police should not be prevented from entering areas used by social visitors. The

Minnesota Court of Appeals opinion then recognizes that these decisions are "at odds" with the United States Supreme Court. As the Minnesota Court of Appeals recognized, those cases require a determination of whether an area is curtilage and, if so, affords the same protections as a person's home. See Oliver v. United States, 466 U.S. 170, 180 (1984).

The Minnesota Court of Appeals then states, incorrectly, that both analyses seek to determine whether a person has an expectation of privacy and uses the same factors. The Minnesota Court of Appeals, using the state court analysis, ultimately concluded that Akins did not have a reasonable expectation of privacy in his attached garage, because members of the public would assume they could use it. This conclusion is in conflict with established Supreme Court precedent which would provide that Akins was entitled to the same fourth amendment protection in his garage as he would be in his home. Clearly an attached garage is within curtilage for fourth amendment analysis, particularly when the officer entered a garage door that had been temporarily opened by the homeowner.

Even accepting the Minnesota Court of Appeals analysis, that Court still reached the wrong conclusion. Under this analysis, the Minnesota Court of Appeals concludes that Akins did not have an expectation of privacy in a garage attached to his house when the door is momentarily opened. Using that analysis, a person who opens his garage door in order to park his car and enter the living area of his home should expect members of the public to rush in under the closing door uninvited. This clearly is not, nor should it be, the state of the law.

The Supreme Court should grant review in order to harmonize Minnesota law with established Supreme Court precedent, and to determine whether a person has a reasonable expectation of privacy after pulling a vehicle into an attached garage.

The Minnesota Supreme Court's decision also conflicts with and improperly applies the law concerning when an officer has a sufficient basis to stop a driver based upon information from a private citizen. While information from private citizens is generally presumed reliable, "[s]ome tips, completely lacking in indicia of reliability, would either warrant no police response or require further investigation before a forcible stop of a suspect would be authorized." Adams v. Williams, 407 U.S. 143, 147, 92 S.Ct. 1921, 1923-24 (1972).

The Minnesota Court of Appeals Opinion, as adopted by the Minnesota Supreme Court, suggests that a citizen's report of erratic driving is sufficient to give an officer the lawful right to stop a driver regardless of what the officer himself sees.

The record in this case indicates that the officer did not have sufficient information to stop petitioner based upon the information from the private citizen and the officer's observations. The officer responded to a citizen report of an erratic driver. The private citizen, Ms. Johnson, called 911 and described Petitioner's driving and the location of his car. Ms. Johnson did not see or describe any alcohol use by Petitioner. It was apparently the 911 dispatcher, not the citizen, who characterized the person as a "possibly impaired driver."

Upon receiving the call, Trooper Sutherland began following Petitioner's car. The officer did not observe any erratic driving or traffic violations while he followed Petitioner's car. The only information the officer had concerning Petitioner was from Ms. Johnson. Despite this complete lack of verification of the caller's information, the officer activated his emergency lights and followed Petitioner.

On these facts, the information from the citizen caller, combined with the officer's observations, did not provide specific and articulable suspicion of a criminal violation. Although the information obtained by the officer may have

created the need for further investigation, once he investigated further by following the car and seeing no violation, he did not have a legal basis to stop Petitioner's car.

A final reason for granting the writ is that the decision of the Minnesota Supreme Court misapplied the due process clause of the fourteenth amendment to the United States Constitution by holding that forcing a person to relitigate an issue that has already been conceded by the state on appeal in an ancillary civil proceeding does not violate a person's right to due process. This Court has held that pursuant to the due process clause, criminal prosecutions must comport with prevailing notions of fundamental fairness. California v. Trombetta, 467 U.S. 479, 485, 104 S.Ct. 2528, 2532 (1984).

The Petitioner's Fourteenth Amendment right to due process has been violated because he has been forced to litigate the identical issue twice: in the ancillary civil implied consent hearing, and in the criminal case. In the implied consent case, the trial court denied Petitioner's motion to suppress evidence. The Petitioner appealed this decision to the Minnesota Court of Appeals. After Petitioner had filed his civil appeal, the state decided not to pursue the appeal and gave Petitioner everything he had requested in his Petition for Judicial Review.

The state then forced the Petitioner to make the same argument concerning the stop and seizure that was previously raised in the implied consent case and in Petitioner's initial civil appeal. The state forced the Petitioner to address this issue again, even though the state previously conceded to all of Petitioner's demands by determining not to pursue the appeal in the implied consent case. It is fundamentally unfair to force Petitioner to retry this issue in the instant case, when the State previously conceded the issue.

This second trial on the same issue this must be considered a due process violation because the state's action are fundamentally unfair to the Petitioner. It is outrageous for the state to force Petitioner to make the same arguments that

were previously conceded by the state in the implied consent case.

CONCLUSION

For the reasons set forth above, a Writ of Certiorari should be granted in this case.

Dated: July 25, 2000

Respectfully submitted,

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STATE OF MINNESOTA

IN SUPREME COURT

C4-99-1066

State of Minnesota,

Respondent,

vs.

James Clifford Akins,

Petitioner.

ORDER

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the petition of James Clifford Akins for further review be, and the same is, denied.

Dated: April 25, 2000

BY THE COURT:

/s/

Kathleen A. Blatz
Chief Justice

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (1998).

STATE OF MINNESOTA
IN COURT OF APPEALS
C4-99-1066

State of Minnesota,
Respondent,

vs.

James Clifford Akins,
Appellant.

Filed March 14, 2000
Affirmed and remanded for sentencing
Lansing, Judge

Hennepin County District Court
File No. 98068700

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Considered and decided by Halbrooks, Presiding Judge, Lansing, Judge, and Shumaker, Judge.

UNPUBLISHED OPINION

LANSING, Judge

On stipulated evidence, following denial of a suppression motion, the district court found James Akins guilty of gross misdemeanor driving under the influence, careless driving, and obstructing legal process. Akins appeals, arguing primarily that the district court erroneously denied his suppression motion and that therefore he is entitled to a new trial. Because the record establishes no constitutional or procedural error, we affirm.

FACTS

A Minnesota state trooper arrested James Akins after a sequence of events triggered by a citizen's 911 report of dangerously erratic driving. The citizen, driving home from work, reported by cell phone to a police dispatcher that a car driving alternately very fast and very slow was swerving from lane to lane in heavy traffic, only narrowly missing a median barrier and, with flashers activated, was driving on the shoulder of the road. The citizen later testified she thought the driver might have been having a seizure.

At the dispatcher's request, the citizen followed the car and remained in phone contact with the dispatcher until a state trooper, responding to the police dispatch, intercepted the cars. The trooper, with his red lights activated, followed the car for two blocks until it turned into a residential driveway. The trooper saw an overhead garage door open and the car pull into the garage.

The trooper drove into the driveway, parked behind the car, and walked through the open overhead door into the garage to ask the driver about his driving conduct. The trooper asked for Akins's license and, because he smelled the odor of alcoholic beverages, asked Akins how much he had to drink. Akins replied, "Too much," and the trooper asked

Akins to walk with him back to the squad. Akins had difficulty maintaining his balance as he followed the trooper. As the trooper began to explain the field sobriety tests he intended to conduct, Akins ran into the garage and toward a door within the garage that led to the residence. The trooper told Akins he was under arrest and ordered him to stop. The trooper followed Akins and, after a short struggle inside the house, subdued Akins and then transported him to the Eden Prairie police station. Akins completed a chemical test that disclosed a .24 blood-alcohol concentration.

The district court denied Akins's motion to dismiss the complaint and to suppress evidence obtained as a result of his seizure and arrest. Akins appeals, contending that (1) the trooper violated his Fourth Amendment rights by the warrantless entry into his garage, (2) the trooper violated his Fourth Amendment rights because the trooper did not have an articulable basis to stop Akins's car, and (3) the state violated his due-process rights by forcing him to relitigate an issue previously conceded by the state in the implied-consent proceeding.

DECISION

I

When reviewing a search or seizure challenge under the Fourth Amendment to the United States Constitution, the reviewing court may independently analyze undisputed facts to determine, as a matter of law, whether evidence resulting from the search or seizure should be suppressed. *State v. Othoudt,* 482 N.W.2d 218, 221 (Minn. 1992). To claim the protection of the Fourth Amendment, a defendant must demonstrate that he personally has an expectation of privacy in the place where the search or seizure occurred and that society recognizes his expectation as reasonable. *Minnesota v. Carter,* 525 U.S. 83, __, 119 S. Ct. 469, 473 (1998).

The Fourth Amendment protects against unreasonable searches and seizures in a person's home and its curtilage. *U.S. v. Dunn,* 480 U.S. 294, 300, 107 S. Ct. 1134, 1139 (1987). In determining whether an area is within the curtilage, the Supreme Court considers four factors: (1) the proximity of the area to the house; (2) whether the area is included within an enclosure surrounding the home; (3) the nature of the uses of the area; and (4) the steps taken by the resident to protect the area from observation by people passing by. *Id.* at 301, 107 S. Ct. at 1139. These four factors "bear upon whether an individual reasonably may expect that the area in question should be treated as the home itself." *Id.*

In two cases, Minnesota appellate courts have held that curtilage includes the garage. *State v. Crea,* 305 Minn. 342, 345, 233 N.W.2d 736, 739 (1975); *Tracht v. Comm'r of Pub. Safety,* 592 N.W.2d 863, 865 (Minn. App. 1999), *review denied* (Minn. July 28, 1999). But in both *Crea* and *Tracht,* the courts further hold that police did not violate the Fourth Amendment when, for legitimate business reasons, they entered areas of the curtilage that were impliedly open to the public. *Crea,* 305 Minn. at 346, 233 N.W.2d at 739 (police conducting an investigation may walk on the sidewalk and onto porch of house and are free to make observations); *Tracht,* 592 N.W.2d at 865 (police entry into open garage to knock on residence door equivalent to entry into porch).

State courts interpreting the Fourth Amendment have generally recognized that police do not violate the Fourth Amendment by going on private property to investigate if they restrict their movements to places visitors would be expected to go, such as walkways, driveways, or porches. 1 Wayne R. LaFave, *Search and Seizure* § 2.3(f), at 507-08 (1996); *see also State v. Ryea,* 571 A.2d 674, 675 (Vt. 1990) (curtilage providing normal access for visitors is not entitled to absolute protection under Fourth Amendment); *State v. Seagull,* 632 P.2d 44, 47 (Wash. 1981) (presence of officer within curtilage is not per se Fourth Amendment violation);

In re Gregory S., 169 Cal. Rptr. 540, 546 (Cal. App. 1980) (no Fourth Amendment violation when officer enters area where public is implicitly invited). The state court decisions rely on the principle that police should not be prevented from entering the areas used by social visitors in which people do not usually have a reasonable expectation of privacy. *See People v. Thompson*, 270 Cal. Rptr. 863, 873 (Cal. App. 2d 1990) (no reasonable expectation of privacy in areas where public has been implicitly invited); *Seagull*, 632 P.2d at 47 ("[a]n officer is permitted the same license to intrude as a reasonably respectful citizen") (citation omitted).

The state court cases that suspend Fourth Amendment protections in areas of curtilage used for public access appear to be at odds with the Supreme Court's curtilage analysis, which inquires whether an area is within curtilage and, if so, affords it the same protection as the house itself. *See Oliver v. United States*, 466 U.S. 170, 180, 104 S. Ct. 1735, 1742 (1984) (curtilage considered part of home for Fourth Amendment purposes). But because both analyses ultimately seek to determine whether a person has a reasonable expectation of privacy in an area, the varying analytical approach is not legally significant. The factors of the analysis are the same; only the order in which the factors are applied varies. *Compare Dunn*, 480 U.S. at 300, 107 S. Ct. at 1139 (determination of *whether area is curtilage* depends upon reasonable expectations of privacy), *with Thompson*, 270 Cal. Rptr. at 873 (determination of *whether curtilage is protected* depends upon reasonable expectations of privacy).

Akins argues that the reasoning in *Crea* and *Tracht* does not apply in this case because his garage is attached and integrated into the architecture of his house in a way that the garage in *Crea* and *Tracht* were not. We do not see an adequate distinction between the *Crea-Tracht* facts and the facts in this case to justify a different result.

In *Crea*, the garage was not attached to the house, but the court also considered whether the police could look into a

walk-in basement. 305 Minn. at 346, 233 N.W.2d at 740. The police in *Crea* walked on the driveway and in other areas within the curtilage. *Id.* at 343-44, 233 N.W.2d at 738. The *Crea* court focused on whether the police were entering into areas of the curtilage "impliedly open to use by the public." *Id.* at 346, 233 N.W.2d at 739. In *Tracht,* the garage was attached to the house and, like Akins's garage, had a door between the house and the garage. 592 N.W.2d at 865. And in *Tracht,* as in this case, the garage had a large overhead door that was open when the police entered. *Id.* People's expectations for access areas of their premises commonly differ from their expectations for more secluded areas. *State v. Corbett,* 516 P.2d 487, 490 (Or. Ct. App. 1973). In the course of urban life, members of the public, including neighbors, friends, postal workers, newspaper deliverers, and salespeople, commonly approach doorways that are the obvious points to gain access to the living quarters. *Id.*

We conclude that Akins did not have a reasonable expectation of privacy in the garage, with its overhead door open, that would require the trooper to stop at its threshold and obtain a warrant before questioning him. The garage may not be the usual means of access to a home. But members of the public would reasonably assume that they could use it, when the overhead door was open, to talk to a resident who himself is using the garage as a means of access. Police may reasonably do the same. The holding of *Tracht* applies to the facts of this case, and the trooper's warrantless entry into the garage did not violate Akins's Fourth Amendment rights.

Parenthetically, we note that a number of jurisdictions would find that the officer's entry into the garage did not violate the Fourth Amendment even if Akins had a reasonable expectation of privacy in his garage. These jurisdictions hold that police may enter a home to complete a lawful investigative stop when the stop is initiated in a public place but the suspect flees inside the home before the stop can be completed. *See Alto v. City of Chicago,* 863 F. Supp. 658,

661-62 (N.D. Ill. 1994) ("an officer who stops a person because of a reasonable, articulable suspicion of criminal activity need not terminate the stop merely because the suspect flees to his home") (citations omitted); *Harbin v. City of Alexandria,* 712 F. Supp. 67, 71-72 (E.D. Va. 1989) *(Terry* stop need not end when suspect walks from porch into house), *aff'd,* 908 F.2d 967 (4th Cir. 1990); *People v. Riviera,* 598 N.E.2d 423, 427 (Ill. App. 2d 1992) (police authorized to make warrantless entry if they have lawful basis for stop and suspect reacts by fleeing to a private sanctuary); *Edwards v. United States,* 364 A.2d 1209, 1214 (D.C. 1976) (officers did not violate Fourth Amendment by following suspects into apartment to complete *Terry* stop initiated on the street), *on reh'g,* 379 A.2d 976, 978 (D.C. 1977) (upholding entry on probable cause grounds); *cf. United States v. Santana,* 427 U.S. 38, 43, 96 S. Ct. 2406, 2410 (1976) (suspect may not defeat arrest set in motion in public place by escaping into private place).

This reading of the Fourth Amendment has, however, elicited a substantive split of authority. *See State v. Beavers,* 859 P.2d 9, 17 (Utah Ct. App. 1993) (rejecting extension of Terry doctrine as contrary to Fourth Amendment principles); *State v. Davis,* 666 P.2d 802, 812 (Or. 1983) (declining to hold that reasonable suspicion sufficient to support temporary detention can support warrantless entry of premises). Because we find that Akins did not have a reasonable expectation of privacy in his open garage, we need not determine whether a warrantless entry for the purpose of completing an investigative stop that began in a public place is reasonable under the Fourth Amendment.

II

We reject Akins's claim that the officer lacked an articulable basis to stop his car. We note initially that it is not a seizure for an officer to talk to a driver who is seated in a

parked vehicle. *State v. Vohnoutka,* 292 N.W.2d 756, 757 (Minn. 1980). But even if an articulable basis were required for the trooper's approach or questioning of Akins, the record amply supports the district court's determination that the citizen's report provided a reasonable articulable basis for the stop. *See Marben v. State, Dept of Pub. Safety,* 294 N.W.2d 697, 699 (Minn. 1980) (stop must be based on articulable suspicion of traffic violation).

The citizen who observed Akins's driving identified herself; told the dispatcher the make, model, and license number of Akins's car; and described Akins's erratic driving as she witnessed it. The dispatcher relayed the information to the trooper who apprehended Akins. The citizen also testified at the implied-consent hearing. These facts more than sufficiently establish a reasonable articulable suspicion that would justify a stop. *See Marben,* 294 N.W.2d at 699 (specific and articulable suspicion to justify a stop may be provided by anonymous citizen's tip when police verify that tipper is in area and close to vehicle).

III

We also reject Akins's claim that requiring him to relitigate the same issues in this criminal proceeding that were previously litigated in the implied-consent proceeding violates due process and is fundamentally unfair. Essentially, Akins is arguing for application of collateral estoppel. Collateral estoppel does not apply, however, between civil implied-consent cases and subsequent criminal cases because the cases involve different parties with different interests. *See State, Dep't of Pub. Safety v. House,* 291 Minn. 424, 425, 192 N.W.2d 93, 94 (1971) (DWI proceedings and implied-consent proceedings are separate actions involving separate parties); *State v. Juarez,* 345 N.W.2d 801, 802-03 (Minn. App. 1984) (noting that the State of Minnesota and the Commissioner of Public Safety are neither the same parties nor parties in

privity). Furthermore, the overlapping issues, although dismissed prior to appeal, were decided against him in the district court proceedings.

IV

Finally, we note that although the district court determined Akins's guilt, the court deferred sentencing until conclusion of the appeal, and thus there has not been an appealable final judgment. *See* Minn. R. Crim. P. 28.02, subd. 2(2) (defendant may not appeal until final judgment entered, and judgment is final when sentence imposed or imposition stayed). Despite the absence of a sentence, both parties have proceeded in this appeal as if the court had not only completed adjudication, but also sentencing. Consequently, we have granted discretionary review under Minn. R. Crim. P. 28.02, subd. 3, in the interest of justice that is obtained through orderly and timely review. *See State v. Soyke*, 585 N.W.2d 418, 420 (Minn. App. 1998) (allowing discretionary review when record fully developed and issue fully briefed).

Affirmed and remanded for sentencing.

s/ Harriet Lansing
March 6, 2000

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

State of Minnesota,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	SIP No. 98068700
	)	
James Clifford Akins,	)	GROSS MISDEMEANOR
	)	
Defendant.	)	

The above-entitled matter came duly on for hearing before The Honorable Philip D. Bush, one of the Judges of the above-named Court, on June 22, 1999, in a courtroom at the Hennepin County Government Center, in the City of Minneapolis, State of Minnesota.

APPEARANCES

James W. Delaplain, Attorney at Law, appeared on behalf of the City of Eden Prairie and the State of Minnesota.

Andrew Birrell, Attorney at Law, appeared on behalf of the defendant.

The defendant appeared in person.

CLERK: Patti Martin

COURT REPORTER: Sandra K. Helget

WHEREUPON, the following proceedings were duly had:

(1:37 p.m.)

THE COURT: This is State of Minnesota versus James Clifford Akins, A-K-I-N-S. Court file is 98068700. If counsel would note their appearances for the record.

MR. DELAPLAIN: Good afternoon, Your Honor, James Delaplain for the City of Eden Prairie, State of Minnesota.

MR. BIRRELL: Andy Birrell, B-I-R-R-E-L-L, for Mr. Akins, who's present before the Court.

THE COURT: The matter was on the trial calendar last week. The issue of probable cause to arrest and suppression motions were filed with memorandum on both sides. We took testimony last week, and there's not a dispute as to the facts, and the record establishes -- from the testimony last week establishes pretty clearly the factual history in this case where a citizen driver observed erratic driving behavior on April 21st of 1998 and called in on a cell phone, the police dispatcher, followed the vehicle until it was intercepted by a State Highway Patrol. It was a known citizen driver that was available to the police and actually, parenthetically, testified at the hearing, and the driver stayed in contact with the vehicle until it was a hand-off to the state trooper and described the erratic driving behavior. Trooper turned on his lights. The car went a couple more blocks and pulled into the driveway and then the garage of his home. The trooper went into the open door of the driveway -- into the driveway and then into the open door of the garage, asked Mr. Akins to come back to the car.

Mr. Akins did come back to the car after indicia of alcohol were noticed by the trooper at that point. Mr. Akins

then left and went into the house, was told to stop by the officer. He did not stop. The state trooper pursued him into the house, struggle ensued, and ultimately Mr. Akins was arrested.

So the issues for the motion to suppress were, first, a probable cause to stop, and then there was also probable cause to enter the house or challenges to enter the house and -- and then due process in terms of -- the third issue raised by the defense was due process with respect to the implied consent hearing, litigating duplicative issues, and I had already ruled on the implied consent earlier.

It's my -- I've read the case law that both sides had submitted and first of all, with respect to whether there was probable cause for the officer to stop and investigate further, City of Minnetonka versus Shepherd, which is found at 420 Northwest 2d, 887, a State of Minnesota Supreme Court decision that analyzes the -- essentially the trio of cases up to that point on probable cause to stop based on a tip from a citizen, and it's clear to me in reading the three cases that they cite as well as the Shepherd analysis of those three cases that there was probable cause for the officer to stop after receiving the citizen call and being sure that he had the same car that the citizen had called about. Even though he did not see any erratic driving behavior on his own, there was a sufficient basis to stop. As I told counsel in chambers, if the officer turned on his lights or -- turned on his lights where he did and if Mr. Akin had pulled over immediately to the curb right at that point and then there was an arrest for drunk driving after the requested field sobriety, et cetera, and other information was gained, that would have been a valid stop and a valid arrest, if it all occurred in a public place. Here it's a known informant who was available, clearly gave their name. Citizen informants are presumed reliable, that there is a low threshold for stopping a vehicle, it just cannot be on whim. Clearly it was not on officer's whim in this case but based on reliable information.

The offense, under the statute and the case law, does not have to be committed in the officer's presence for the traffic stop. The only case where there was an oppression based on a tipster within this group is Olson v. Commissioner of Public Safety, a 1985 case where it was an unidentified person saying it was somebody -- a particular car was probably a drunk driver. Here substantially more than that. We had an identified tipster with a lot more information, and it falls much closer to Marda, Davis and the facts in Shepherd, so there was probable cause to stop the vehicle, whether it be on the road or to follow the vehicle when it pulled into its driveway and then into the garage.

The other question then is whether the officer could have pursued into the house, and that -- probably the leading case on that is the United States Supreme Court case United States versus Santana, found at 96 Supreme Court 2406, a 1976 Minnesota -- United States Supreme Court case, and there the Supreme Court concluded that, quote, "A suspect may not defeat an arrest which has been set in motion in a public place and which is therefore proper under Watson by the expedient of escaping to a private place." And that appears to be exactly the circumstances here of going from a public place where the officer had the authority to stop and investigate further and not stopping for the officer and going into a private or semi-private place in terms of a garage since it was open.

I'm not -- we're not on the identical facts of the recent Court of Appeals decision in Tract versus Commissioner of Public Safety, which came down on April 20th of 1999, was an open garage that was generally open, the police came up and walked in. Here the garage was opened, and it's unclear whether there was a general invitation for the public to come into the garage or use it to go up to the door just as if it were a front porch, but I don't think that fact needs -- or that question needs to be decided in this case because the officer had the authority to pursue into that private space given the lawful authority the officer had to stop Mr. Akins' car.

While in that space there was not a seizure. It was a request for Mr. Akin to return -- or to come outside for further investigation and testing. He complied with that. There was not a seizure within -- even if it was a private space, there was not a seizure or arrest within the private space. Mr. Akin came outside. The officer further developed probable cause to make an arrest for alcohol traffic, and then Mr. Akin fled into the house. And the officer, while he was in a public place, ordered him to stop, told him he was under arrest, and he was fleeing, and clearly under the case law the officer had the authority to pursue him back into the house to effectuate a lawful arrest for which there was probable cause.

So on all bases the motion -- both requests for the motion to suppress will be denied. Mr. Birrell --

MR. BIRRELL: Yes.

THE COURT: -- do you wanted to proceed?

MR. BIRRELL: Following up on our conversation in chambers, it's my understanding that we would be in agreement about the procedure to be followed, which would be that Mr. Akins would execute the necessary waivers so we could try the case on stipulated facts to the Court. If there was a finding of guilt, then a sentencing would be deferred so that we could have the matter reviewed by the Court of Appeals. And if that's the understanding, I'm prepared to put the waivers on the record.

THE COURT: And the facts that will be stipulated to would be the facts as alleged in the complaint, is that --

MR. BIRRELL: That would be all right --

THE COURT: -- your understanding?

MR. BIRRELL: -- Your Honor.

MR. DELAPLAIN: The city has no objection, Your Honor.

THE COURT: Okay. I'm not -- on the table there there sometimes is a stack of waiver -- jury trial waiver forms. I don't know if there's one there or I need to get one from Patti.

MR. BIRRELL: I don't see one. I could do it on the record if you want.

THE COURT: We can do it on the record. We will get a form from Patti because the statute requires a written waiver, but we certainly want to inquire.

MR. BIRRELL: I don't see one, so why don't we just get the form.

THE COURT: Okay.

MR. BIRRELL: Can I have the case number?

THE COURT: Case number is 98068700.

MR. BIRRELL: Mr. Akins, have you been present in court and heard the proposed procedural resolution of this matter?

THE DEFENDANT: I have.

MR. BIRRELL: And you understand that you have a right to have a trial by a jury in this matter?

THE DEFENDANT: Yes.

MR. BIRRELL: And that as part of our proposed disposition you would be giving up your right to have a jury trial?

THE DEFENDANT: Yes.

MR. BIRRELL: Okay. And at any trial you have certain rights that I'm going to talk to you about. First of all, you have the right to have witnesses come in and testify in your presence. You understand that?

THE DEFENDANT: Yes.

MR. BIRRELL: You have the right to cross-examine, which means ask questions of the witnesses who testify in your presence. You understand that?

THE DEFENDANT: Yes.

MR. BIRRELL: You have the right to require anybody that you want to come in and testify to do that?

THE DEFENDANT: Yes.

MR. BIRRELL: You have the right to testify if you want to; if you don't want to, no one can make you, and no one can say anything about that fact.

THE DEFENDANT: Yes.

MR. BIRRELL: Okay. You have the right to make both an opening and closing argument or have me do that for you.

THE DEFENDANT: Yes.

MR. BIRRELL: Okay.

THE DEFENDANT: Can we go off the record for just one second and I ask a private question --

THE COURT: Sure, absolutely.

THE DEFENDANT: -- of my counsel?

(Discussion off the record from 1:50 to 1:51 p.m.)

MR. BIRRELL: You have -- have I answered your question fully?

THE DEFENDANT: You have.

MR. BIRRELL: Do you have any other questions that you want to ask me or His Honor, Judge Bush, about any of your other rights?

THE DEFENDANT: No.

MR. BIRRELL: I'm showing you a document entitled "Waiver of a Jury Trial." There is a signature line above the word "defendant." Would you please sign that so the Judge can see it?

THE DEFENDANT: Okay.

MR. BIRRELL: I would offer the written waiver of jury trial along with the other waivers.

THE COURT: I will approve the waiver of the jury trial of this matter, and both sides agree that the trial will

be on the facts as alleged in the complaint except that count 1, the enhanced gross misdemeanor, has been struck down as unconstitutional, as an improper statute by the legislature under the constitution, so there will be a trial on Counts 2, 3 and 4 for purposes of today's hearing. Is that everybody's understanding?

MR. DELAPLAIN: That's my understanding, Your Honor.

MR. BIRRELL: Yes, it is, Your Honor.

THE COURT: I find there is proof beyond a reasonable doubt with respect to all three counts that Mr. Akins was operating a motor vehicle in the -- in Hennepin County, in the Eden -- in the Eden Prairie community of Hennepin County on April 21st of 1998 and that within two hours of operating that vehicle there was a blood test -- an alcohol testing result that showed a .24 blood alcohol concentration, which is contrary to Minnesota Statute -- contrary to Minnesota Statutes.

I also find, given the allegations and the information in the complaint, based on the civilian witness, there is sufficient proof beyond a reasonable doubt of careless driving and, based on the complaint, sufficient proof for obstructing legal process as a gross misdemeanor, and it's my understanding the matter -- clearly the trial on stipulated facts was done to allow an appeal.

Mr. Birrell, I'm -- since I am on the receiving and not on the -- or my -- I receive cases from the trial calendar but I'm done with them here, the time frame for filing the appeal is what? Is it 30 or 60 on a criminal case at this point?

MR. BIRRELL: I believe it's 90 days. I will file it tomorrow.

THE COURT: All right. What I will do is defer sentencing until an appeal is decided on this matter. Once an appeal is either decided or if it is dismissed for some reason or whenever the appeal process is closed, both parties should notify my office within seven working days of the resolution of the appeal. And if the appeal is successful by the defense, then we will enter that into the court records and close the case. If it is not successful, then a sentencing will be scheduled.

Between now and sentencing, Mr. Akin, I'm not going to require -- you're going to remain out of custody. The condition is that you have no drug- or alcohol-related traffic offenses while this appeal and -- while we are awaiting the sentencing on this matter. If there is an alcohol- or drug-related traffic offense or a driver's license violation, operating a vehicle outside of the requirements or the permission granted by the driver's license, then the matter will come back in front of me for sentencing and we are not going to wait until the appeal is finished, but --

THE DEFENDANT: I understand.

THE COURT: -- the condition of no drug or alcohol offenses and no driver's license violations. I don't know what the status of your license is. If it's valid, you can drive anywhere --

THE DEFENDANT: It's valid.

THE COURT: Okay. When you -- as long as it's valid and stays valid, you can drive anywhere under the terms and conditions. If it's not valid, then you can't be driving, and certainly you can't be driving under the influence of alcohol.

THE DEFENDANT: Appreciate you doing this, and I won't embarrass you. You won't see me back here.

THE COURT: Okay. We will see you back --

THE DEFENDANT: Well --

THE COURT: Unless it's necessary, unless it's necessary.

THE DEFENDANT: Yes.

THE COURT: All right, okay.

MR. BIRRELL: Thank you, Your Honor.

MR. DELAPLAIN: Thank you, Your Honor.

THE DEFENDANT: Thank you, Your Honor.

(Adjourned at 1:56 p.m.)